

LEGISLATIVE BILL 987

Approved by the Governor April 7, 1988

Introduced by Remmers, 1; Rogers, 41; R. Johnson, 34

AN ACT relating to commercial transactions; to amend sections 9-414 and 9-420, Uniform Commercial Code; to provide for a master lien list as prescribed; to provide duties for the Secretary of State; to limit liability as prescribed; to provide a fee; to provide for the waiver or release of a portion of a lien as prescribed; to provide rules and regulations; to provide liability for refusal to endorse checks or other instruments and for harassment, frivolous actions, and other improper conduct as prescribed; to harmonize provisions; to provide duties for the Revisor of Statutes; to provide an operative date; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. The Secretary of State shall compile lien information received by his or her office pursuant to subsection (2) of section 9-414, Uniform Commercial Code, into a master lien list in alphabetical order according to the last name of the individual against whom such lien is filed or, in the case of an entity doing business other than as an individual, the first word in the name of the debtor. Such master lien list shall contain the name and address of the debtor, the name and address of the lienholder, and the type of such lien.

Sec. 2. (1) The master lien list prescribed in section 1 of this act shall be distributed by the Secretary of State on a quarterly basis corresponding to the date on which the lists provided pursuant to sections 52-1301 to 52-1321 are distributed. Such master lien list may be mailed with the list provided pursuant to sections 52-1301 to 52-1321. If mailed separately, the master lien list shall be mailed by either certified or registered mail, return receipt requested.

(2) Any person may register with the Secretary of State to receive the master lien list prescribed in section 1 of this act. Such registration shall be on an

annual basis. The Secretary of State shall provide the form for registration. A registration shall not be completed until the form provided is properly completed and received by the Secretary of State accompanied by the proper registration fee. The fee for annual registration shall be thirty dollars, except that a registrant under sections 52-1301 to 52-1321 shall not be required to pay the registration fee provided by this section in addition to the registration fee paid pursuant to sections 52-1301 to 52-1321 for the same annual registration period. Beginning for calendar year 1989, a registrant under sections 1 to 5 of this act shall pay an additional annual fee to receive quarterly master lien lists prescribed in section 1 of this act. For each master lien list provided on microfiche, the annual fee shall be twenty-five dollars. For each master lien list provided on paper, the annual fee shall be two hundred dollars. The Secretary of State may provide for the distribution of master lien lists on any other medium and may establish reasonable charges therefor.

(3) The Secretary of State, by rule and regulation, shall establish the dates after which a filing of liens will not be reflected on the next quarterly distribution of the master lien list and the date by which a registrant shall complete a registration in order to receive the next quarterly master lien list.

(4) The Secretary of State shall deposit any funds received pursuant to subsection (2) of this section in the Uniform Commercial Code Cash Fund.

Sec. 3. (1) A buyer of farm products who is registered to receive the master lien list as provided in section 2 of this act and who, in the ordinary course of business, buys farm products from a seller engaged in farming operations shall take free of any lien created under the provisions of Chapter 52, article 2, 5, 9, 11, 12, or 14, if such lien is not on the most recent master lien list received by the buyer pursuant to sections 1 to 5 of this act, except that such buyer shall take subject to any such lien if the lien was filed after the last date for inclusion in the most recent quarterly distribution of the master lien list and if the buyer has received from the lienholder or seller written notice of the lien. For purposes of this subsection, the form of such written notice of the lien may be a copy of the lien filing. For purposes of this subsection, received by the buyer shall mean the first date upon which delivery of the master lien list is attempted by a carrier, and in all cases a buyer shall

be presumed to have received the master lien list ten days after it was mailed.

(2) If a buyer buying property subject to a lien created under the provisions of Chapter 52, article 2, 5, 9, 11, 12, or 14, tenders to the seller the total purchase price by means of a check or other instrument payable to such seller and the lienholder of any such lien for such property and if such lienholder authorizes the negotiation of such check or other instrument, such authorization or endorsement and payment thereof shall constitute a waiver or release of the lien specified to the extent of the amount of the check or instrument. Such waiver or release of the lien shall not serve to establish or alter in any way security interest or lien priorities under Nebraska law.

(3) Except for waiver or release as provided in subsection (2) of this section, this section shall not be interpreted or construed to alter liability of buyers of property subject to liens created under the provisions of Chapter 52, article 2, 5, 9, 11, 12, or 14.

Sec. 4. The Secretary of State, all county clerks, and their employees or agents shall be exempt from all personal liability as a result of any error or omission in providing information of such statutory liens except in cases of willful misconduct or gross negligence.

Sec. 5. The Secretary of State shall adopt and promulgate rules and regulations necessary to implement sections 1 to 5 of this act.

Sec. 6. Any payee, endorser, or endorsee on a check or instrument issued in payment for property subject to a lien under Chapter 52, article 2, 5, 7, 9, 11, 12, or 14, or Chapter 54, article 2, or farm products subject to a security interest under article 9, Uniform Commercial Code, or Chapter 52, article 13, who wrongfully refuses to endorse such check or instrument to any other payee, endorser, or endorsee on such check or instrument who is a superior lienholder, superior secured party, or other person legally entitled to such check or instrument shall be liable to any payee, endorser, or endorsee entitled to such endorsement on such check or instrument for damages. A court shall assess attorney's fees and costs if, upon the motion of any party or the court itself, the court finds that any payee, endorser, or endorsee on a check or other instrument wrongfully refused to endorse such check or instrument in payment for property subject to a lien or farm products subject to a security interest or that an

attorney or party brought or defended an action or any part of an action that was frivolous or that the action or any part of the action was interposed solely for delay or harassment. If a court finds that an attorney or party unnecessarily expanded the proceedings by other improper conduct, including, but not limited to, abuses of civil discovery procedures, the court shall assess attorney's fees and costs.

Sec. 7. That section 9-414, Uniform Commercial Code, be amended to read as follows: U9-414. Filing information; county clerk; register of deeds; Secretary of State; duties; fees.

(1) Upon receipt of a financing statement, an amendment to a financing statement, an assignment, a continuation statement, a termination statement, or a release of collateral, relating to (a) equipment used in farming operations, (b) farm products, including crops growing or to be grown, (c) farm products which become inventory of a person engaged in farming, or (d) accounts or general intangibles arising from or relating to the sale of farm products by a farmer, each county clerk shall on the day of receipt transmit to the Secretary of State the following document information:

- (i) Identification of the document and the county where the original document may be found;
- (ii) Document number;
- (iii) Name and address of the debtor or debtors;
- (iv) Name and address of the creditor or creditors;
- (v) Type or types of goods covered;
- (vi) Date and time of filing; and
- (vii) Social security or federal identification number of the debtor or debtors, if available.

(2) Upon receipt of a lien filed pursuant to Chapter 52, article 2, 5, 7, 9, 10, ~~or 11, 12, or 14, or~~ Chapter 54, article 2, or Chapter 77, article 39, or an amendment, release, or termination of such lien, the county clerk or register of deeds shall on the day of receipt transmit to the Secretary of State the following document information:

- (a) Identification of the document and the county where the original document may be found;
- (b) Document number;
- (c) Name and address of the debtor or debtors;
- (d) Name and address of the creditor or creditors;
- (e) Type or types of goods covered;

(f) Date and time of filing; and

(g) Social security or federal identification number of the debtor or debtors, if known.

(3) For each filing, amendment, separate statement of assignment, certificate of discharge or subordination, notice, certificate of release or nonattachment, partial release, or full release of a lien filed pursuant to Chapter 52, article 2, 5, 7, 9, 10, ~~or 11, 12, or 14.~~ ~~or~~ Chapter 54, article 2, ~~or Chapter 77, article 39,~~ the county clerk or register of deeds shall charge such fees as are set forth in section 9-403. The retention and distribution of such funds shall be the same as is provided for fees under subsection (9) of section 9-403.

(4) Upon receipt of information transmitted pursuant to this section, the Secretary of State shall record and index the information so that on or before January 1, 1986, such information shall be available for the following types of inquiry: In person, written, and telephone and other electronic medium, including computers, except that information relative to security interests in crops growing or to be grown shall continue to be available for inquiry in the same manner as provided in section 9-411 before July 1, 1983.

Sec. 8. That section 9-420, Uniform Commercial Code, be amended to read as follows: U9-420. Uniform Commercial Code Cash Fund; created; use; Secretary of State; furnish printers.

(1) There is hereby created the Uniform Commercial Code Cash Fund. All funds received pursuant to section 9-403, Uniform Commercial Code, ~~and sections 52-1313, and 52-1316, and section 2 of this act~~ shall be placed in the fund and used by the Uniform Commercial Code Filing Council to carry out its duties pursuant to sections 9-417 and 9-418. ~~On and after November 21, 1986, money~~ Money in the fund shall be used by the Secretary of State to carry out subsection (2) of this section, sections 9-401, 9-403, and 9-411 to 9-415, Uniform Commercial Code, ~~and sections 52-1301 to 52-1321, and sections 1 to 5 of this act.~~

(2) The Secretary of State shall furnish each county clerk a printer compatible with the centralized computer system established pursuant to section 9-415 so the county clerk is able to mail written confirmation of inquiries by the end of the next business day as required by section 52-1316.

Sec. 9. The Revisor of Statutes shall transfer sections 54-202 to 54-207 and assign such sections to a new article in Chapter 52.

Sec. 10. This act shall become operative on July 1, 1988.

Sec. 11. That original sections 9-414 and 9-420, Uniform Commercial Code, are repealed.

Sec. 12. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.